

REMARKS

Claims 1-4 stand rejected under 35 U.S.C. § 103 as being unpatentable over the alleged admitted prior art shown in Figure 8 of Applicants' drawings. This rejection is respectfully traversed because Figure 8 of Applicants' drawings is NOT admitted prior art. As mentioned in the prior response, the label "Prior Art" identified in Figure 8 of the U.S. application was an inadvertent typographical mistake when preparing the application for filing, and indeed, Applicants' specification clearly describes Figure 8 as a *comparative example* conceived by Applicants to evidence the merits of the present invention, rather than as admitted prior art. As described on page 11, lines 10-11, the Brief Description of the Drawings describes Figure 8 as a "first comparative example" (*see also* page 23, lines 2-4 of Applicants' specification). Moreover, the Background of the Invention on pages 1-3 of Applicants' specification does NOT reference Figure 8 as admitted prior art.

The Examiner has maintained the pending rejection based on the assertion that there are discrepancies between the foreign priority document and the present application (e.g., Figures 6 and 8 of foreign priority correspond to Figures 8 and 10 of present application, respectively). However, it is respectfully submitted that such discrepancies are completely unrelated to the issue at hand; namely, whether Figure 8 of the present application is admitted prior art or merely a comparative example. As is well known, foreign priority documents do not necessarily use the same reference numerals and/or Figure labels as the U.S. filed application. In the instant case, the issue is whether the *substance* of Figure 8 of the present application is disclosed as a comparative example or as admitted prior art in the foreign priority document regardless of whether it is identified as Figure 8 in the foreign priority document.

In order to expedite prosecution, Applicants' representative initiated a telephone interview with the Examiner to discuss the issue. Applicants and Applicants' representative would like to thank Examiner Le for his courtesy in conducting the interview and for his assistance in resolving issues. As a result of the interview, the Examiner requested that Applicants file a certified English translation of the written portion of the foreign priority document (certified copy of foreign document, with Figures, already submitted to PTO with filing of application) to further evidence that Figure 8 of the present application is simply a comparative example conceived by Applicants to evidence the merits of the present invention, rather than as admitted prior art.

Turning to the foreign priority document and the translation thereof, it is noted that the foreign priority document does not include Figures 3 and 4 of the present application. Accordingly, Figures 1 and 2 of the foreign priority document correspond to Figures 1 and 2, respectively, of the present application, while Figures 3-9 of the foreign priority document correspond to Figures 5-11, respectively, of the present application. Accordingly, Figure 8 of the present application corresponds to Figure 6 of the foreign priority document. As expressly disclosed in the foreign priority document, all references to Figure 6 are in terms of illustrating a "comparative example" rather than admitted prior art (*see, e.g.*, pages 19 and 27 of the certified English translation of the foreign priority document).

Again, it is respectfully submitted that the labeling of Figures 8-11 of the present application as "Prior Art" was simply an inadvertent typographical error, and should have instead been labeled as "Comparative Examples" *as supported by Applicants' specification as originally filed*. In this regard, attached hereto are corrected drawings which properly label Figures 8-11 as Comparative Examples as identified on pages 23-25 of Applicants' specification.

The Examiner is directed to MPEP § 2129(I) which states that “even if labeled as “prior art,” the work of the same inventive entity may not be considered prior art against the claims ...” In the instant case, it is respectfully submitted that Applicants’ specification makes clear that Figure 8 is the work of the same inventive entity, conceived as a comparative example to illustrate the improvements made possible by the present invention. As evident when reviewing *the priority document drawings* (submitted to PTO at the time application was filed) and further evidenced by the corresponding disclosure thereto in both the certified English translation of the priority document and the present application, Figures 8-11 are NOT labeled as prior art in the foreign priority document and are disclosed simply as comparative examples conceived by Applicants to illustrate a comparison to the claimed invention. In view of the foregoing, it is respectfully requested that the rejection under § 103 be withdrawn.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants’ attorney at the telephone number shown below.


To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

Application No.: 10/754,518

including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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